IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 56 of 2006

Reserved on: 5.10.2007

Date of decision: 26.10.2007

Jai Gopal ... Appellant

Versus

Union of India & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. B.K. Malhotra, Advocate.

For the respondents: Mr. Janesh Mahajan, Central Government Counsel, for respondent No. 1.

Mr. N.K. Sood, counsel for respondents No. 2 & 3.

V.K. Ahuja, J. :

This is a regular second appeal filed by the appellant against the judgment and decree of the Court of learned District Judge, Mandi, dated 1.10.2005, vide which the appeal filed by the appellant against the judgment and decree of the Court of learned Civil Judge (Senior Division) Mandi, dated 1.7.2004, dismissing the suit for declaration and permanent prohibitory injunction filed by the appellant was dismissed.

Briefly stated the facts of the case are that the appellant as plaintiff filed a suit for declaration and permanent injunction in regard to

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

land comprised in Khasra No. 727/1 measuring 3-0-18 bighas being part of Khasra No. 727 measuring 8-0-11 bighas alleging that the suit land is entered in the ownership of Union of India. The plaintiff alleged that he was in open, peaceful and hostile possession to the knowledge of Union of India for the last 30 years since 1963 and he had constructed a Pucca Danga (retaining wall) and raised an orchard of Plum etc. over the suit land. It was also alleged that Estate Officer, B.B.M.B. had initiated a summary proceeding against the plaintiff under Section 4(1) of the Public Premises Act in the year 1986-87 and also ordered eviction of the plaintiff in the year 1987. The said order was set aside on appeal. On 30.6.1994, the Estate Officer initiated summary proceeding again under Section 4(1) of the Public Premises Act and the order of the Estate Officer was challenged in appeal but in vain and was also challenged before this Court by way of filing a writ petition and this Court directed that question of adverse possession cannot be decided by the Estate Officer and can be agitated in proper proceedings in the proper Court by the parties. Thereafter, the plaintiff filed the present suit after issuance of notice under Section 80 C.P.C. upon the defendants.

Defendants took up the plea that the Estate Officer had ordered the eviction of the plaintiff on 30.9.1998 and the appeal was also dismissed by the learned Additional District Judge, Mandi, on 17.6.1999 and the writ petition filed by the plaintiff was also dismissed. It was also pleaded that the plaintiff has been evicted in accordance with law on 26.9.2000 in pursuance of the order passed by the Estate Officer and the defendants are in possession of the land in question.

The suit was tried by the learned trial Court and the main issue framed was as to whether the plaintiff was proved to be in adverse

possession of the suit land for the last 30 years. The findings were recorded by the trial Court against the plaintiff, which findings were affirmed by the learned first Appellate Court by writing a detailed judgment.

During the course of arguments, the learned counsel for the appellant had submitted that since the plaintiff was proved to be in possession in 1963 which possession had ripened into ownership in 1993 and the question of adverse possession was to be decided by the Civil Court and, therefore, he had filed the Civil Suit before the learned trial Court. It was also submitted that the plaintiff was never evicted from the suit land and as such, findings to the contrary are liable to be set aside.

During the course of arguments, the learned counsel for the appellant had also tried to argue that the suit land was different for which notice was issued to him by the Estate Officer, whereas the land in suit for which Civil Suit was filed before the learned trial Court was different and, therefore, this point had not been rightly considered by the Courts below.

On the other hand, the learned counsel for the respondents had supported the impugned judgments for the reasons recorded therein.

A perusal of the grounds of appeal filed by the appellant shows that no specific plea was taken that the notice was issued by the Estate Officer for some other land, while the suit was filed in regard to suit land which was not the same land and, therefore, the Courts below have not rightly appreciated this plea. This plea could be urged before this Court only in case this plea had been specifically taken in the grounds of appeal which is not so and as such, this plea is not open to be agitated before this Court. To clear the matter I may mention herewith that a perusal of the notice issued by the Estate Officer Ext.DW/1 attached with

the case file shows that eviction order was passed as against the plaintiff in regard to land measuring 5-0-17 bighas comprised in Khasra No. 871. This fact is also borne out from the copy of the judgment of the learned Additional District Judge Ext.DW1/B. The plaintiff challenged the said order by way of writ petition and a Division Bench of this Court passed the following order:

> " The learned counsel for the petitioner contended that the petitioner was in adverse possession of the land in dispute. In our opinion, the authorities under the Act, have rightly not gone into that question as such question does not fall within the jurisdiction of the authorities under the Act. If it is the case of the petitioner that he is in adverse possession, it is open to him to take appropriate proceedings in accordance with law, in appropriate forum. Without making any observation on that aspect of the matter, the writ petition deserves to be dismissed and is accordingly dismissed. Notices stand discharged."

It appears that thereafter when the plaintiff filed the suit in view of the observations made by this Court, he confined his plea of adverse possession only to the suit land measuring 3-0-18 bighas being part of Khasra No. 727/1. Therefore, by a clever drafting or by restricting his claim the plaintiff reduced the area allegedly in his possession to 3-0-18 bighas, though earlier he had been ordered to be evicted from the land measuring 5-0-17 bighas. The land remains the part of same Khasra No. 727 and, therefore, during the course of arguments even in the absence of plea, this case was tried to be set up that the notice was issued for some other land, while suit land was filed for another land, which plea is absolutely incorrect and I, therefore, repel the same being devoid of any merit. Coming to the question that the plaintiff was

proved to be owner in possession of the suit land as already discussed above, in pursuance of the order passed by the Estate Officer under Public Premises Act, the plaintiff was ordered to be ejected from the suit land which order was confirmed in appeal and was not set aside in the writ petition filed by the plaintiff before this Court. The learned District Judge had rightly referred to the observations made by this Court that plea of adverse possession was to be decided by the Civil Court for which the civil suit was filed and the said plea raised by the plaintiff has not found favour with the learned trial Court or learned District Judge who referred to the evidence in detail as well as the question as to whether the plaintiff was proved to be in adverse possession or not. Once the plaintiff had been duly ejected on 26.9.2000 from the suit land as observed by both the Courts below, the plaintiff cannot claim that he is still continuing in possession of the suit land. The learned first appellate Court had rightly referred to the documentary as well as the oral evidence on record to show that the plaintiff has failed to prove that he was recorded in possession in any revenue record. The learned District Judge as well as the trial Court has referred to the oral as well as documentary evidence in detail and nothing was brought to the notice of this Court from which it could be inferred that the learned trial Court or learned District Judge had wrongly relied upon the document not proved in accordance with law or has not considered any oral as well as documentary evidence. Once there is nothing on record to show that there has been any misreading of evidence, there is no question of reappraisal of evidence by this Court and no question of law what to talk of substantial question of law arises for determination in this appeal.

It follows from the above discussion that no case is made out for admission of the appeal since no substantial question of law arises to be decided by this Court and there can be no reappraisal of evidence by this Court sitting in second appeal. The plaintiff has been evicted in accordance with law from the suit land and has failed to prove his case and there is no merit in the appeal which deserves to be dismissed and the same is dismissed accordingly with no order as to costs.

(V.K. Ahuja),
Judge

October 26, 2007
(BSS)